

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY SP D.C.
05 SEP -9 AM 11:11
THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN. JACKSON

UNITED STATES OF AMERICA,

Plaintiff,

VS.

HAROLD LONG,

Defendant.

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Civ. No. 04-1058-T/An

Crim. No. 99-10005-T

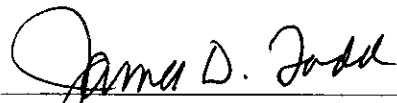
ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY

Defendant Harold Long filed a *pro se* motion pursuant to 28 U.S.C. § 2255 on March 24, 2004. On August 5, 2005, the Court issued an order transferring the motion to the Sixth Circuit Court of Appeals, pursuant to 28 U.S.C. § 2244(b)(3), as a second or successive § 2255 motion. The defendant filed a motion for reconsideration on August 19, 2005. The Court construed the August 19 filing as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), and denied the motion on August 22, 2005. Defendant has now filed a notice of appeal and request for a certificate of appealability.

The Court questions whether a notice of appeal can even be effective in this case, as the Court has already transferred jurisdiction to the Sixth Circuit under In re Sims, 111 F.3d 45, 47 (6th Cir. 1997). If the Court of Appeals determines that the present § 2255 motion is

not second or successive, it will direct this Court to consider the motion on the merits. Thus, the request for a certificate of appealability is unnecessary, and is DENIED.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 15 in case 1:04-CV-01058 was distributed by fax, mail, or direct printing on September 13, 2005 to the parties listed.

Harold Long
16421-076
FCI Memphis
P.o. Box 34550
Memphis, TN 38184--055

Honorable James Todd
US DISTRICT COURT